

REMARKS

This Reply and Amendment is intended to be completely responsive to the non-final Office Action dated June 21, 2002.

In the Drawings

Proposed amended formal FIGURES 1-12 have been provided for entry into the Application by the Examiner. A copy of proposed amended formal FIGURES 1-12 has also been provided for review by the official draftsperson. No new matter has been added.

Claims

Claims 1-50 have been rejected. Claims 1-50 are cancelled. New Claims 51-90 are added. Accordingly, Claims 51-90 are pending in this Application.

In the claims, the symbol “%” has been replaced with the term “percent.” In dependent Claims 52-63, 65-77 and 79-90 the term “claim” has been replaced with the term “Claim.”

The status and any changes relative to the previous version of the claims is shown in Exhibit A. 37 C.F.R. § 1.121. No new matter has been added.

Allowable Subject Matter

On Page 10 of the Office Action, the Examiner stated that dependent Claims 7, 19, 32 and 44 would be “allowable” if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

New independent Claims 51, 64 and 78 have been added in a form indicated by the Examiner to be “allowable.”

A. New Claim 51.

New Claim 51 is based on original dependent Claim 7 (allowable), which includes all the limitations of independent Claim 1 (as originally presented).

B. New Claim 64.

New Claim 64 is based on original dependent Claim 44 (allowable), which includes all the limitations of independent Claim 39 (as originally presented), with the following changes:

“The grid supporting structure” has been changed to recite “A grid supporting structure.”

“a separator disposed within the container and separating the positive and negative plates, the grid supporting structure having a layer of active material pasted thereto” has been deleted to comply with 35 U.S.C. § 112 ¶ 2 as prescribed by the Examiner.

C. New Claim 78.

New Claim 78 is based on original dependent Claim 39 (allowable), which includes all the limitations of independent Claim 39 (as originally presented), with the following changes:

“The grid supporting structure for use in a lead-acid battery having a positive plate and a negative plate disposed within a container, a separator disposed within the container and separating the positive and negative plates” has been changed to recite “A lead-acid battery of a type having a positive plate and a negative plate disposed within a container and a separator disposed within the container and separating the positive and negative plates.”

“The grid supporting structure having a layer of active material pasted thereto” has been deleted.

Accordingly, the Applicants request favorable consideration and allowance of new independent Claim 51 (and corresponding dependent Claims 52-63), new independent Claim 64

(and corresponding dependent Claims 65-77), and new independent Claim 78 (and corresponding dependent Claims 79-90).

Claim Rejection -- Double Patenting

On Page 2 of the Office Action, the Examiner rejected Claims 1-50 under the judicially created doctrine of double patenting over Claims 1-33 of U.S. Patent No. 6,117,594 (the '594 patent). The Examiner stated:

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

On Page 3 of the Office Action, the Examiner provisionally rejected Claims 1-50 under the judicially created doctrine of double patenting over Claims 30-71 of co-pending U.S. Patent Application No. 09/627,522 (the '522 application). The Examiner stated: "This is a provisional double patenting rejection since the conflicting claims have not yet been patented."

The present Application and the '594 patent are commonly owned. The present Application and the '522 application are commonly owned.

The Applicants request that the double patenting rejection of Claims 1-50 over Claims 1-33 of the '594 patent, and the provisional double patenting rejection of Claims 1-50 over Claims 30-71 of the '522 application, be held in abeyance until allowable independent claims are indicated by the Examiner (since a timely filed terminal disclaimer would overcome the rejection such that further consideration of the claims on that rejection should not be necessary). 37 C.F.R. § 1.111.

Claim Rejection -- 35 U.S.C. § 112 ¶ 2

On Page 4 of the Office Action, the Examiner rejected Claims 26-50 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Examiner stated:

Claims 26 and 39 recite “a grid supporting structure” having “a positive plate and a negative plate disposed within a container” and “a separator.” However, the grid supporting structure cannot comprise the battery container, separator or both the positive and negative plates.

Claims 1-50 have been cancelled without prejudice to further prosecution on the merits. New independent Claim 64 (based on original independent Claim 39) does not recite “a separator disposed within the container and separating the positive and negative plates” as prescribed by the Examiner. New independent Claim 78 (also based on original Claim 39) recites a “lead-acid battery” having “a positive plate and a negative plate disposed within a container” and “a separator disposed within the container” as prescribed by the Examiner. Accordingly, the rejection of Claims 26-50 under 35 U.S.C. § 112 ¶ 2 has been overcome.

Claim Rejections -- 35 U.S.C. §§ 102 and 102/103

On Page 5 of the Office Action, the Examiner rejected Claims 1-3, 5-6, 8-16, 18, 20-28, 30-31, 33-41, 43 and 45-50 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,298,350 (“Rao ‘350”).

On Page 6 of the Office Action, the Examiner rejected Claims 1-4, 8-13, 26-29 and 33-38 under 35 U.S.C. § 102(e) as being anticipated by, and alternatively under 35 U.S.C. 103(a) as being unpatentable over, U.S. Patent No. 5,874,186 (“Rao et al. ‘186”).

On Page 8 of the Office Action, the Examiner rejected Claims 1-6, 8-18, 20-31, 33-43 and 45-50 under 35 U.S.C. 102(b) as being anticipated by, and alternatively under 35 U.S.C.

§ 103(a) as being unpatentable over, U.S. Patent No. 5,691,087 ("Rao et al. '087"), as evidenced by Rao et al. '186.

Claims 1-50 have been cancelled without prejudice to further prosecution on the merits.

In response to the rejection of Claims 1-3, 5-6, 8-16, 18, 20-28, 30-31, 33-41, 43 and 45-50 under 35 U.S.C. § 102(b), the rejection of Claims 1-4, 8-13, 26-29 and 33-38 under 35 U.S.C. §§ 102(e)/103(a), and the rejection of Claims 1-6, 8-18, 20-31, 33-43 and 45-50 under 35 U.S.C. §§ 102(b)/103(a), the Applicants make this statement:

Claims 1-50 have been cancelled. New independent Claim 51 (and corresponding dependent Claims 52-63), new independent Claim 64 (and corresponding dependent Claims 65-77), and new independent Claim 78 (and corresponding dependent Claims 79-90) have been added to recite in proper form subject matter the Examiner indicated would be "allowable" (i.e. patentable under 35 U.S.C. §§ 102 and/or 103).

By canceling and adding such claims, the Applicants wish to make it unmistakably clear that they do not agree to or acquiesce in the rejection of Claims 1-3, 5-6, 8-16, 18, 20-28, 30-31, 33-41, 43 and 45-50 under 35 U.S.C. § 102(b), the rejection of Claims 1-4, 8-13, 26-29 and 33-38 under 35 U.S.C. §§ 102(e)/103(a), and/or the rejection of Claims 1-6, 8-18, 20-31, 33-43 and 45-50 under 35 U.S.C. §§ 102(b)/103(a), and/or agree with the Examiner's view of the scope and the content (i.e. disclosure) of Rao '350, Rao et al. '087, and Rao et al. '186.¹ Such claims have been cancelled and added only to obtain prompt allowance of claims reciting subject matter indicated as allowable by the Examiner.

Accordingly, favorable consideration and allowance of new independent Claim 51 (and corresponding dependent Claims 52-63), new independent Claim 64 (and corresponding dependent Claims 65-77), and new independent Claim 78 (and corresponding dependent Claims 79-90).

¹ At this time, the Applicants maintain that independent Claims 1, 14, 26 and 39 (as originally presented) recite subject matter that is patentable over the cited references.

Comments on Statement of Reasons for the Indication of Allowable Subject Matter

In Section 9 of the Office Action, the Examiner provided the following statement of reasons for the indication of allowable subject matter:

[T]he claims are directed to a grid supporting structure comprising an alloy consisting essentially of lead, calcium, tin and silver. The silver content is in the range of from 0.005-0.012% based upon the total weight of the alloy.

The prior art (Rao patents cited above) does not teach a grid supporting structure comprising an alloy consisting essentially of lead, calcium, tin and silver, wherein the silver content is in the range of from 0.005-0.012% based upon the total weight of the alloy.

While the Applicants agree that Claims 7, 19, 32 and 44 (as originally presented) recite a combination of subject matter that is patentable over the cited references, the Applicants do not necessarily agree with or acquiesce in the reasons for the indication of allowable subject matter given by the Examiner. Moreover, the Applicants note that the recited subject matter as well as various other subject matter and/or combinations of subject matter may be patentable for other reasons than those given by the Examiner. The Applicants expressly reserve the right to set forth additional and/or alternative reasons for patentability and/or allowance with the present Application or in any other future proceeding.

* * *

It is submitted that each outstanding objection and rejection to the Application has been overcome, and the Application is in a condition for allowance. Claims 51-90 will be pending in this Application. The Applicant requests consideration and allowance of all pending Claims 51-90.

* * *

The Examiner is invited to telephone the undersigned if such would advance the prosecution of the Application.

Respectfully submitted,

Date 10-21-2002

By Christopher Turoski

FOLEY & LARDNER
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5367
Telephone: (414) 297-5654
Facsimile: (414) 297-4900

Christopher M. Turoski
Attorney for Applicant
Registration No. 44,456

Exhibit A

To Show Status and All Changes Relative to Previous Version of the Claims

1.-50. (Cancelled)

51.-90. (New)